

Training module under project “Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018” on

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU WASTE LAW

30 November – 02 December 2016, Thessaloniki (Greece)

1st Case study on the Waste Framework Directive



A local authority decides to repair a track through the countryside. The repair work is to consist, inter alia, in laying down wooden duckboards to facilitate the passage in wetland areas.

Those duckboards are supported by the structures made up of old telecommunications poles which, for their previous use, were treated with CCA solution. The active ingredients in the treatment solution are chromium, copper and arsenic.

The telecommunications poles had been dismantled at an unspecified earlier point in time and then had been stored by the telecommunications company. Some of them were chosen for the project on the basis of a visual check.

An NGO takes the view that those poles constitute hazardous waste and requested that the authority responsible for environmental protection prohibits the use of those materials. This request was refused. The authority claims that waste legislation does not apply to the use of the poles and that, if it would apply, the foreseen use of the poles would be allowed. Now the NGO applies against this decision to your court.

Assume that the NGO has standing to introduce the application and that under the REACH Regulation wood that was treated with CCA solution may be used as described. Moreover, please note that the REACH Regulation does not apply to waste and that wood waste containing or contaminated with hazardous substances, such as CCA solution, is considered hazardous (Code 17 02 04* of Decision 2000/532).

If there is enough time, you can also look at the 2nd case study.

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2nd Case study on the Waste Framework Directive

A Dutch trader of oil products loaded diesel fuel onto a ship and delivered it to a client, an operator of gas stations, established in Belgium.

When the consignment at issue was delivered to the client, it became apparent that, at the time that the ship was loaded, the tanks were not completely empty, which resulted in the diesel being mixed with methyl tertiary butyl ether (MTBE). As a result of this mixing the flashpoint of that consignment was too low for it to be resold as fuel for diesel engines in accordance with its initial purpose.

Since the client was precluded from storing the mixture having regard to its environmental permit, the client returned the consignment to the trader, which shipped the consignment back to the Netherlands. Subsequently, the trader blended the mixture with more diesel until the flashpoint again corresponded with the specification of diesel fuel. Subsequently, it was to be placed back on the market.

Additionally, it appears, firstly, that the consignment at issue could, in principle, be sold on the market without being processed, in the condition in which it was when it was returned by the client and, secondly, that the commercial value of the consignment at issue corresponded largely to that of a product which meets the agreed specifications.

However, before the Dutch court, the prosecutor argues that, at the time of its shipment from Belgium to the Netherlands, the product in question constituted waste and by having failed to adhere to the notification procedure laid down in the Waste Shipment regulation, the trader was guilty of illegal traffic.

Was it necessary to consider the consignment waste or not?